

Raval (Migration) [2024] AATA 841 (3 April 2024)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mrs Purviben Kuldipkumar Raval Mr Kuldipkumar Arvindbhai Raval
CASE NUMBER:	2304975
HOME AFFAIRS REFERENCE(S):	BCC2021/1953729
MEMBER:	Peter Booth
DATE:	3 April 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicants Student (Temporary) (Class TU) visas.

Statement made on 03 April 2024 at 11:09am

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – false or misleading information and bogus document – university qualification and statement of marks – no response to department’s investigations or tribunal’s invitation to provide information, and loss of entitlement to hearing – decision under review affirmed

LEGISLATION

*Migration Act 1958 (Cth), ss 5(1), 65, 359(2), 359A, 359C, 360(3)
Migration Regulations 1994 (Cth), Schedule 2, cl 500.217, Schedule 4, criterion 4020(1), (5)*

CASES

*Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274
Hasran v MIAC [2010] FCAFC 40
Kaur v MIBP [2017] FCAFC 184
Plaintiff M64/2015 v MIBP [2015] HCA 50
Trivedi v MIBP [2014] FCAFC 42*

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 20 March 2023 to refuse to grant the applicants Student (Temporary) (Class TU) visas under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicants applied for the visas on 14 October 2021. The delegate refused to grant the visas on the basis that the first named applicant (the applicant) did not satisfy the requirements of cl 500.217 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations).
6. On 6 March 2024 the Tribunal wrote to the applicant pursuant to ss 359(2) and 359A of the Act, inviting the applicant to provide information about the review application in writing. The invitation was sent to the last email address provided in connection with the review. The applicant was advised that, if the information was not provided in writing by the prescribed period, being 20 March 2024 or within any extended time as requested and granted, the Tribunal may make a decision on the review without taking further steps to obtain the information and the applicant would lose any entitlement they might otherwise have had under the Act to appear before the Tribunal to give evidence and present arguments.
7. The review applicant did not provide the information within the prescribed period and no extension of time was requested. In these circumstances, s 359C applies and pursuant to s 360(3) the review applicant is not entitled to appear before the Tribunal. The effect of s 363A of the Act is that if a review applicant has no entitlement to a hearing, the Tribunal has no power to permit him or her to appear: *Hasran v MIAC* [2010] FCAFC 40. The Tribunal has decided to proceed to a decision without taking further steps to obtain the information.
8. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.217 for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1);
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA);
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10

years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

10. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

11. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
12. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
13. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

BACKGROUND

14. In the absence of a hearing the Tribunal turns to consider the available material.
15. On 14 October 2021 the applicant applied for a Student Visa, subclass 500. It's important application she declared that she had completed a Bachelor of Business Administration at Saurashtra University and also provided a "statement of marks".
16. On 8 February 2022 the department investigated and concluded that the qualification was "nongenuine" and may amount to false and misleading information.
17. By letter dated 19 January 2022 applicant was invited to comment upon the Department's preliminary investigations. The applicant did not respond.
18. On 20 March 2023 the delegate refused the application for the student visa in question on the basis that the declaration as to the applicant's prior academic qualifications was false and misleading information. The delegate concluded as follows:

On 14 October 2021, the applicant lodged a Student (subclass 500) visa application. In support of their application for a Vocational Education and Training Sector (subclass 500) visa, the applicant declared completion of a Bachelor of Business Administration at Saurashtra University in their application form and provided a 'Statement of Marks' document corresponding with this course.

On 8 February 2022, a Departmental officer undertook investigations to verify the Bachelor of Business Administration qualification from Saurashtra University. The Bachelor of Business Administration qualification from Saurashtra University was found to be non-genuine. The abovementioned information raised strong concerns that the applicant may have given information that is false and misleading in a material particular in relation to their current Student (subclass 500) visa application, by submitting a non-genuine document. As such, the applicant may not meet Public Interest Criterion (PIC) 4020(1)(a), and, as such, consequently not meet 500.217.

Specifically, the information raises concerns about the applicant's ability to meet the Genuine Temporary Entrant (GTE) criteria for the Student (subclass 500) visa on the basis of their claims in their current Student (subclass 500) visa application that the applicant holds a qualification from Saurashtra University which is found to be non-genuine, and therefore the applicant may not meet the GTE criteria outlined in 500.212 of the Migration Regulations; as this information is deemed to be a relevant matter to the applicant's Student (subclass 500) visa application.

On 19 January 2023 the applicant was provided with 28 days to provide comment on the information that was considered to be false or misleading in a material particular. To date no response has been received from the applicant regarding the findings from the Departmental investigations.

Based on the evidence and information before me, I find that the applicant has given or caused to be given information that was considered to be false and misleading in a material particular. Accordingly I am not satisfied that the applicant meets Public Interest Criterion (PIC) 4020, subclause 4020 (1).

19. On 11 April 2023 the applicant applied to this Tribunal for a review of that decision.
20. By letter dated 6 March 2024 the applicant was invited to comment on certain information. The applicant did not respond. By letter dated 25 March 2024 the applicant was informed that she had lost her hearing rights.

CONCLUSION

21. The Department investigated the applicant's claim that she had completed a Bachelor of Business Administration and concluded that it was "nongenuine" and may amount to false and misleading information. The delegate concluded that information as to the applicant's prior academic history, contained in the student visa application, was non-genuine and was false and misleading information. The applicant has been invited on two opportunities to provide evidence or make submissions that the information regarding her previous academic qualifications was true and was not false or misleading information. The applicant has chosen not to do so. Accordingly, there is evidence before the Tribunal that information contained in the student visa application was false and misleading information. In the absence of any contradictory information, the uncontradicted preliminary conclusion by the Department and the uncontradicted conclusion by the delegate is accepted by the Tribunal.
22. Information regarding an applicant's previous academic history is important information which is used by decision makers to assess whether the applicant should be granted a student visa, whether they are a genuine student and whether they are a genuine temporary entrant. Such information is in relation to a material particular to the decision as to whether to grant a student visa in the Tribunal's view.

23. The Tribunal is satisfied that the application for a student visa was made by the applicant, and that the academic qualification information was false and misleading information in a material particular in relation to the visa application.
24. The Tribunal concludes that the applicant has given or caused to be given 'information that is false or misleading in a material particular' as defined in PIC 4020(5), i.e. information that is:
- false or misleading at the time it is given, and
 - relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information in relation to the visa application.
25. Accordingly, the applicant does not meet clause PIC 4020(1).

Should the requirements of PIC 4020(1) or (2) be waived?

26. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa. The decision-maker must first be satisfied that there are such circumstances, then must consider whether to exercise the discretion to waive the requirements, having regard to those circumstances: *Kaur v MIBP* [2017] FCAFC 184.
27. The expressions 'compelling circumstances' and 'compassionate or compelling circumstances' are not defined for these purposes. To be compelling, the circumstances must force or drive the decision-maker irresistibly to be satisfied: see *Plaintiff M64/2015 v MIBP* [2015] HCA 50. The ordinary meaning of 'compassionate' relates to feelings of sympathy, sorrow, pity or concern for others.
28. Neither the applicant nor her representative as identified any which would form the basis of a waiver of the requirements of PIC 4020 (1). The Tribunal is not aware of any evidence which would satisfy subclause 4040 (4).
29. Accordingly, the Tribunal is not satisfied that there are:
- compelling circumstances that affect the interests of Australia; or
 - compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, which justify the granting of the visa.
30. Therefore, the requirements of PIC 4020(1) should not be waived.
31. The application of the applicant having been unsuccessful it follows that the second applicants application must also fail.

DECISION

32. The Tribunal affirms the decision not to grant the applicants Student (Temporary) (Class TU) visas.

Peter Booth
Member

33.

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is *false or misleading in a material particular* means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...